1944 File No. S.Dwr. 3/44

Examined Nur 10/4.

Legal DEPARTMENT

A BRANCH

Suits-Dharwar

Subject:— L.C. Suit No 405 of 1943

1) Subbanna bin Sangappa Hubballi
2) Nilkanthayya Dandayya Anegalmath
3) Totappa Sangappa Bulla.
4) Sannabasappa Muddappa Koti

} Plffs

V/s

1) Karaveerayya bin veerayya Kalwad
2) Ishwarayya Karweerayya Kalwad
3) Shekharayya do do—
4) The Province of B'bay.

} Defts

X

P 59 (E.K.)

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L.C.Suit No.405 of 1943 of F.C.
Court, Dharwar.

Plff:-Subbanna Sangappa Hubli of Gadag and others for themselves and on behalf of the public residents in the old Bazar Galli - Gadag.

Vs.

Deft No.4. The Province of Bombay.

CHRONOLOGICAL STATEMENT OF FACTS.

This is a representative suit for (1) declaration of the plffs right to take Darshan and perform worship throughout the year of Shri Basavannadevar (located in C.T.S.No.1185 of Gadag) and the plffs' right to instal and seat at the said place Shri Kamadev and hold festivities in connexion therewith in the month of Falguna every year (II) for injunction restraining defts 1 to 3 from obstructing plffs in exercise of their above mentioned rights; (III) for mandatory injunction ordering the defts to demolish the wall, the doors and windows fixed on the eastern side of C.T.S.No.1185 (V) and for further injunction restraining the defts from constructing any wall, fixing up doors and windows or doing any other act which would prevent plffs from taking Darshan and paying homage, performing Puja of Basavanna Dev and from seating Shri Kamadev and holding festival during the month of Phalguna every year and (VI) for equitable reliefs and costs.

2. In the City Survey inquiry held in 1914 and 1915 the inquiry officer found that the whole of the Thakkalki No.555 55 occupied at that time by one Karavirayya Irayya Kalwad of Gadag consisted of two portions, one a dwelling house occupied by the said Karavirayya Irayya and the other known as the 'Kaman-Gudi' (a public place usedfor seating the said deity) in which there exists also the idol of"Basavanna" an image of worship mainly by the Lingayats. The inquiry officer observed that the site

on which the dwelling house existed was formerly an open site and that the "Kamangudi" temple was built by the public. The E.O. therefore, found that the dwelling house which was given chalta No.55 (now C.T.S.No.1186) was of private ownership of Karavirayya Irayya Kalwad and that the Kamangudi site (which was given chalta No.55A, now C.T.S.No. 1185 in suit) vested in Government. The decision of the E.O. regarding this Kamangudi site was in the following terms :

"The site comprised in this chalta No.(55A) is public Kamangudi but it has been in the occupation of one Karavirayya Irayya Kalwad. The temple has ceased to be used for seating Kamanna for some years-past and the said Karavirayya has included it in his residence. It should be vacated, if it is not leased to him". P.14 file II.

3. These two plots No.55 & 55A now represent as stated above, C.T.S.Nos.1186 and 1185 respectively as shown in the sketch. It appears that the E.O. further ordered in respect of the Kamangudi site that Karavirayya Kalwad who had unauthorisedly occupied the site should be ousted and that the Collector's sanction should be obtained for holding it a "rent free land". In Col. 8 of the Inquiry register, the E.O. has further remarked that it i.e. the Kamangudi site is decided as belonging to Govt. But it has been used for public purpose for a long time. Collector's sanction was duly obtained as per his No.197/9-1-15". P.3 file III.

4. This C.T.S.No.1185 (chalta No.55A) the Kamangudi site which measures 37-3 Sq. yds, somehow came to be given to the occupant of C.T.S.No.1186 (Karavirayya Kalwad) in 1916 by the Prant Officer, on conditions mentioned below and a Kabulayat was got executed on 31-8-1917 by the said Karavirayya. P.O.III D Dharwar's No.1192 of 19-6-1917 not traceable.

1. An occupancy price of Rs.15/- to be paid.
2. An annual ground rent of annas two to be paid regularly.
3. The ground rent of annas 2 to be paid from 1-8-1916 upto 50 years and the occupant to pay such rent as would be fixed by the authority for a further period after the completion of 50 years.
4. Condition No.3 is scored out and the following has been specifically mentioned, "in this place there is at

3 7

File III
P.18-19.
The Kabulayat or the copy of it is not in the correspondance.

The conditions of the Kabulayat mentioned herein are copied from the Collr's order dt 21st August 1939 (See P 165-167 file IV)

present "Kamangudi"

E. The occupant shall not errect any kind of structure on the plots shown in the plan below the Kabulayat and he shall keep the site open to the public till the end of the lease period.

F. Subject to these conditions amongst others which may be enforced according to the rules and orders in form, the occupant shall hold the site.

G. The plot is liable to be forfeited to Government by the Collector, if any of the above conditions are infringed by the holder and the plot be disposed of in any manner by the Collector as he deems fit. This grant appears to have been made to the said Karavirayya Kalwad by the P.O. without proper inquiry.

5. On 12-10-1938, the residents of Gadag applied to the Collector of Dharwar requesting that the site Kamangudi C.T.S.No.1185 of Gadag encroached upon by one Karavirayya may be made over to the public for seating Kamanna (the God of love) in Holi holidays.

P.1-5 file IV marked in ink. P.7 file Do.

On 25-10-1938, the Collector forwarded the application to the Prant III Division for inquiry and report and on 29.10.1938 the P.O. forwarded the same to the Mamlatdar, Gadag, for compliance.

6. The residents of the old Bazar lane where this site is situated, complained in their application and the statement recorded on 22-11-1938 on their behalf before the Mamlatdar Gadag that till 1938 they used to seat Kamanna on this site from time immemorial every year during the Holi holidays and in March 1938, Karavirayya Kalwad, the occupant of C.T.S.No.1185 and 1186 obstructed them for the first time. They further complained that Karavirayya closed the site by erecting walls on all sides and had fixed a door and windows in one of the walls and had thus rendered the site inaccessible to the public. They also further requested that as Karavirayya had infringed the conditions of the Kabulayat, the Collector should order resumption of the plot, give it over to the

give it over to their possession in order to make use of the same for public purpose and for worshipping the idol of Basavannadev which existed on some portion of it.

7. On 3-12-1938 Karavirayya Irayya Kalwad made a statement before the City Survey Mamlatdar Gadag, to the effect that the structures on both the C.T.S.Nos.1185 and 1186 were ancient and were constructed by his forefathers, that his family is in possession and Vahivat thereof, as owners,; that the muncipal tax was being paid by his family, that the decision at the City Survey in 1914 that C.T.S.No. 1185 vested in Government was wrong; but at any rate in 1917 he held the C.T.S.No.1185 on lease from Government on payment of ground rent. Karavirayya added that the C.T.S. map of 1914 shows that the C.T.S. No.1185 is completely covered by a structure; that there was an open passage of 3 cubits in front of C.T.S.No.1185 with rooms on either side and it was not possible to seat "Kamanna" there. He observed that the C.T.S. map showedthat the building the rooms and that he however fixed newly a door near the passage and the two windows in the wall with the permission of the muncipality. He further contended that the idol of Basavanna was installed for the private worship of his family people and not intended for the public worship. He further denied that any "Kamanna" was ever seated in that place and that the public had any right to seat "Kamanna", though it was true that the site was described as "Kamangudi" in the city survey records, such right, if any, being extinguished by lapse of time. P.23-24 file IV.

8. On 14-12-1938, the Mamlatdar, Gadag, submitted his report to the P.O.III Division, that in 3rd para of the Kabulayat executed by Karavirayya, it was mentioned that the plot (Kamangudi C.T.S.No.1185) should be kept open while he had purposely encroached upon the rights of the public and in order to show his wahivat, he had closed the building by fixing lately a door and windows in one of the walls and had thus committed a breach of the conditions of the Kabulayat. The Mamlatdar, therefore, recommended that Karavirayya should be evicted. P.129-131 file IV.

5-9

9. On 24-12-1938 the Asst:Collector III Dn. ordered that notice of eviction should be served upon Karavirayya Accordingly on 28-12-1938 notice of eviction was issued and on 29-12-1938 it was served on Karavirayya.

P.133 file Do:

10. On 1-3-1939, the Assistant Collector III Dn., forwarded the papers to the Collector, Dharwar, stating that notice of eviction was wrongly served upon Karaviray who, it was found, had granted the site (C.T.S.No.1185) on occupancy price and rent and who was not prevented by the conditions of the Kabulayat from building over the site.

P.155 file IV.

11. On 8-5-1939 the residents of the old Bazar Galli, Gadag, submitted an application to the Collector stating that Karavirayya had forfeited the lease by enclosing the site by walls, doors and windows and that they should be allowed to worship "BasavannaDeo" and seat 'Kamanna.

P.159-160 file IV.

12. On 21st August 1939, the Collector held that during the tenor of the lease period, Karavirayya could not prevent the public from the use of the site (C.T.S. No.1185) for the public purpose; that he had violated condition No.4 of the Kabulayat dated 31-8-1917 by raising structures on the site which was required to be kept open and that therefore, the site became liable to be forfeited. The Collector, therefore, ordered that C.T.S. plot No.1185 measuring 37-3 sq.yds should be forfeited to Government as required by condition No.6 of the Kabulayat and that Karavirayya be evicted under Sec.79A of the Bombay Land Revenue Code from the site and that the lease should be cancelled. The Collector further requested the the P.O. III Division to submit proposals regarding the grant of the forfeited holding to the public in general especially to the residents of the old Bazar for the purpose of worship of Shri Basavanna Deo and seating "Kama".

P.165-167 file IV.

13. On 31-8-1938, Karavirayya was served with notice of eviction under section 202 Bombay L.R.C.

P.175 file IV in ink.

14. It appears that on 22-9-1939 Karavirayya Kalwad filed an appeal to the Bombay Revenue Tribunal from the order of the Collector dated 21st August 1939. On 13-10-1939 and 16-10-1939 Karavirayya appears to have submitted an application to the said Tribunal and the Collector of Dharwar respectively stating that the original C.T.S. papers which were not before the Collector had since been traced and that they may be obtained. The application stated that the Mulki Awak No.1192 of 12-6-1916 showed that Karavirayya is the owner of the site and the building on it by right of purchase from Government (2) that there is no encroachment (3) that the public had nc right to worship Basavanna Deo and seat Mamanna.

P.277-79 file IV in ink.

15. On 28th May 1940, the Bombay Revenue Tribunal in its No.O-256, allowed the appeal of Karavirayya, setting aside the order of the Collector No. N.C.R.245 dated the 21st August 1939 and allowed Karavirayya (the appellant) to remain in possession under the lease granted to him. The B.R.T. observed that it was not clear upon the record and the inspection of the Commissioner S.D. showed that the building now in question (on the site C.T.S. No.1185) was not proved to have been recent or to be a breach of the condition of the lease in favour of the appellant.

16. On 9-7-1943 Mr.V.G.Jamkhandi pleader for the plaintiff No.1 and 3 and one Sanaxxx-Basappa Koti gave notice of suit under Section 80 C.P.C. to the Collector, Dharwar. It is stated in the notice that it is given on behalf of plffs 1 to 3 and on behalf of the public of Halebazargalli Gadag. On 19-7-1943 the Collector Dharwar, acknowledged receipt of the notice which was accepted by him.

17. It appears, the plffs being aggrieved by the order of the Bombay Revenue Tribunal ~~in x Sadaxx Sexxnex Sixasx Sub Judge~~ subsequently filed L.C.Suit No.234 of 1941 in the court of the Second Class Sub-Judge at Gadag, for the reliefs prayed for in this suit. The Sub-Judge, Gadag held that Government was a necessary party to the suit and thereon returned the plaint for presentation to the proper court. Thereafter, the plffs filed Mis.Appeal No.9 of 1943 to the District Court, Dharwar from the above mentioned directions of the Sub-Judge. On 23-6-1943 the learned District Judge

dismissed the appeal holding that the reliefs claimed by the plffs in the Gadag suit (L.C.Suit No.234 of 1941) affected the proprietory rights of Government in as much as the plffs sought the demolition of the building i.e. a wells, doors and windows standing in the C.T.S.No.1185 which the deft Karaviravva could not do without the consent of his landlord (i.e. Govt). The learned District Judge thereupon held that Government was a necessary party to the suit.

On 11-9-1943 the plffs for themselves and on behalf of the Public of Halebazar Galli, Gadag, filed the present representative suit praying for (1) declaration of their rights to take daily darshan of Shri Basavanna-deo and seat Kamanna, in the C.T.S.No.1185 of Gadag during the Holi Holidays (2) injunction restraining the deft from obstructing the plffs from exercising their rights (mentioned above) (3) mandatory injunction ordering the deft to demolish the walls, doors and windows fixed on the eastern side of C.T.S.No.1185 (injunction restraining the deft from doing any act which would prevent the plffs from exercising their rights mentioned and equitable reliefs and costs.

Grounds of defence.

In para 9 of the notice of suit given by the plffs on 9-7-1943 and in para 7(6) of the plaint plffs clearly say that there is no point of dispute between them and Government; that Government has not in any way interfered with the rights of the plffs; that the Kabulayat passed by deft No.1 Karaveerayva in favour of Government respects and safeguards the interests of plff, that the order of the Bombay Revenue Tribunal does not affect the rights of the plffs. The plffs however say that in the Civil Suit No.234 of 1941 of Gadag court and Mis.No.9 of 1943 of the District Court, the Sub-Judge and the District Judge respectively held that Government was a necessary party to the plffs' suit and for this reason the plffs have made

Government a partv to this sui

Now in the citv survey of 1914 the inquirv officer held that the C.T.S.No.1185 (Chalta No.55A) to be a "Public Kamangudi i.e. public propertv, though it was in the occupation of Karavirayva. The temple had to be ceased to be used for several years past for seating the Kama. The site was to be vacated, (P.14 file II). "In column 8 of the inquirv register the remarks are that the property is Government property. But it has been used for a public purpose for a long period. The Collector sanctions in his No.197/ 9-1-1915" (P.3 file III)." Subsequently under the orders of the Prant Officer III Division the site (C.T.S.No.1185) in dispute was leased to deft 1 (Karaveerayya) and on 31-8-1917 a Kabulayat was got executed bv him in favour of Government. Condition No.3 in Kabulayat is scored out and the following clause has been specificallv mentioned viz., "In this place there is at present 'Kamagudi.' Then follows condition No.4 viz. that "he the lesee) shall not erect any kind of structure on the plot shown in the plan below the Kabulayat and he shall keep the site open to the public till the end of lease period".

The plffs complained that deft 1 had committed a breach of the above mentioned conditions bv erecting walls, constructing doors and windows and by not keeping the site open to the public. The Collector held that there was a breach and ordered forfeiture of the site. The Bombay Revenue Tribunal however held that the building on the site in question was not proved to be a recent one and there was no breach of condition No.4. The Tribunal, therefore, allowed the deft to remain in possession of the site under the terms of the Kabulayat of 1917.

According to the position of law in the case of a crown grant the lessee is entitled to hold the propertv leased by Government in accordance with thez terms of the grant which are to be found in this case in the Kabulayat of 1917, and according to the rules of law that mav be in force. In this case deft No.1 is entitled to occupy the site so long as he does not commit a breach in the conditions as decided by the tribunal. Plffs

13.

might enforce their legal rights, if they have any against deft No.1, during the lattern's lease period. According to condition No.4 of the Kabulayat the site has to be kept open to the public. But Government need not, it appears, take any interest unless their rights are interfered with or ~~unless with~~ or unless damage is done to its property, either by plffs or deft 1. At the end of the lease period, deft 1 or his heir has to return the property in the same condition in which it was at the time of the grant. He cannot allow any rights to be created in favour of a third person, so as to affect the rights of Government. At the same time he cannot erect permanent structures on the site. In this case for instance deft 1's residential house (C.T.S.No.1186) adjoins the site in suit. Deft No.1 cannot be allowed to include the site in suit in his residential building. It may be noted here that though the site is kept open to the public by the termsof the Kabulayat, it is not quite clear as to whether the plffs have a right to worship 'Basavandeo idol existing on the site. So far such right has not been recognised by the Government. As regards the plff's right to seat Kamanna plffs allege ~~that~~ in para 6 of the plaint that till 1938 they used to seat Kamanna on the site in dispute which deft No.1 denies. But the decision of the city survey inquiry officer made in 1914 shows that the site has ceased to be for seating Kama for several years. Anyhow under the circumstances, it appears that the question in this suit may be left to be decided by the court, as it does not appear to be quite necessary for Government to pu up any special defence especially in view of the fact that the site in question is described in Revenue records as "Public Kamangudi" and as it is allowed to be kept open to the public in the Kabulayat executed by deft No.1. However, the court is to be requested to order the defected party to pay Govt. costs.

If hereafter the R.L.A is pleased to think that defence should

P.T.O

be put in, a draft written statement will be submitted
for approval on the lines of the defence to be sanctio
by Govt

N. 1533

L.C.Suit No. of 1943.

In the Court of the First Class Sub-Judge,
at Dharwar.

Plaintiffs:- 1. Subbanna bin Sangappa Hubballi, Caste Vishwakarma Brahmin, age 5., occupation Goldsmith, of Gadag.
2. Nilkanthayya Dandayya Anegalmath, caste Lingayat, age 35, occupation Priest, Gadag.
3. Totappa Sangappa Bulla, caste Lingayat, age 40, occupation agriculture, of Gadag.
4. Sannabasappa Muddappa Koti, caste do, age 35, occupation agriculture, of Gadag for themselves and for and on behalf of the public of Hale Bazar Galli, of Gadag.

Versus.

Defendants:- 1. Karaveerayya bin Veerayya Kalwad, caste Lingayat, age 65, occupation trade, of Gadag.
2. Ishwarayya Karaweerayya d, caste do, age 32, occupation School teacher, of Gadag.
3. Shekharayya Karaweerayya Kalwad, caste do, age 30, occupation private service, Gadag
4. The Province of Bombay.

The plaintiffs above-named beg to state and submit as follows:-

1). The suit property is as below:-

City S.No.1185 situated in Hale Bazar Galli of Gadag area 37-3 Square yards, bounded on the East and North by road, on the West by the house of defendants 1 to 3 being C.S.No.1186 and on the South by the house of Veerappa Akki. This property C.T.S. No.1185 is called "Kamana Gudi".

2). Defendants 1 to 3 are the owners of C.T.S.No.1186 adjoining Suit C.T.S. No.1185. Defendant 1 is the father of defendants 2 and 3 and they form an undivided Hindu family and both the C.T.S.Nos. are in their possession.

3). Suit C.T.S.No.1185 is known from immemorial times as "Kamana Gudi" and the public of Hale Bazar Galli have from immemorial times the right to seat and instal the Deity of Shri Kama Deva in that place in the month of Phalgun every year during the Holy Holidays and to hold festivals &c. in connection therewith. Further from immemorial times there is a Deity of Shree Basavanna Deva in the said property and the public of the said lane have got the right from immemorial times of visiting and taking Darshan of this deity and worshipping and paying homage to the said deity. The above said rights are vested in the public of Hale Bazar Galli from immemorial times.

4). Defendant 1 taking undue advantage of the fact that suit C.T.S.No.1185 adjoined his own house made encroachments on the suit property. In the City Survey inquiry of 1914 it was held that the defendant 1 had encroached on the suit property and subsequently defendant No.1 passed a Kabulyat on 31-8-1917 in favour of the Government in respect of the said property. The plaintiffs i.e. the public of Hale Bazar Galli were not parties either to the City Survey

proceedings or the subsequent arrangement between the Government and defendant 1.

5). The property was granted by Government to defendant 1 on lease for a period of 50 years commencing on 1-8-1916 subject to certain conditions. One of the conditions is that the temple of Shree Kama Deva is situated in the property leased and that the said property should remain as it was without any building thereon. Further, the lease provides that in case of breach of any of the conditions the Government had the right to evict defendant 1 even before the expiry of the period of the lease. The object of imposing such a condition as is referred to above is to safeguard the rights of the public of Hale Bazar Galli to instal Shree Kama Deva every year with due festivities and also to worship and present offerings &c. to Shree Basavanna Deva without any interference whatsoever.

6). The public of Hale Bazar Galli accordingly continued, as before, to instal Shree Kama Deva and also to worship and take Darshana of Shree Basawa Deva until the end of 1938. However at the time of Holi Holidays in 1938. Defendants 1 to 3 objected, after the installation of Shree Kama Deva, and as they resorted to violence the Deity of Shree Kama Deva had to be removed at the instance of the Police. In or about December, 1938 defendants 1 to 3 removed the tattis situated on the eastern side of suit property enclosing the 3 Ankans of open space, and erected a brick wall with windows and door therein. Formerly there was no door and the tattis were meant only for sheltering the property. But the public had free access to the property at all times. In view of the brick wall and door constructed by defts 1 to 3

the rights of the public are interfered with. Hence the suit for a permanent injunction ~~g~~ against defendants 1 to 3 restraining them from interfering with the rights of the public.

7). In view of the facts stated above it is clear that defendants 1 to 3 have no rights whatsoever to obstruct the public of Hale Bazar Galli in the exercise of their legitimate rights as mentioned in para 3 above. The suit is filed by plaintiffs for themselves and as representing the public of Hale Bazar Galli at ~~Gad~~ Gadag.

8). After the construction of the brick wall and the door and the window therein by defendants 1 to 3, certain proceedings were ~~were~~ started before the Revenue Authorities as to whether defendants 1 to 3 had committed any breach of the conditions contained in the lease. The Collector of Dharwar held that there was a breach and therefore defendants 1 to 3 should be evicted but on appeal to the Revenue Tribunal it was held that no such breach was proved and the Collector's order was set aside.

9). Defendant 4, the Province of Bombay has in no way interfered with the rights of plaintiffs. The City Survey Inquiry of 1914 was behind the back of plaintiffs to whom no notice was given of the said inquiry. Further, the Kabulayat passed by deft 1 in favour of - Government clearly respects and safeguards the rights of plaintiffs. The order of the Revenue Tribunal made in 1940 does not at all affect the rights of the plaintiffs. Hence there is no point in dispute between plaintiffs and defendant 4, the Province of Bombay. However, since an order has been made by the learned Subordinate Judge of Gadag in Suit No.234 of 1941 confirmed by the appeal

15 1937

Court in Mis.Appeal No.9 of 1943 that defendant 4 is a necessary party to the suit, Defendant 4 is added as a formal party.

10). Defendants 1 to 3 however under a mistaken impression that some right derogatory to the rights of the plaintiffs is conferred on them by Government are obstructing plaintiffs, in the exercise of their rights. As stated above none of the orders or other proceeding of Government in any way affects the rights of plaintiffs and there is no foundation for any such inference or interpretation. Further, if any such inference or interpretation is sought to be imposed on the said orders or proceedings the said proceedings and orders would be ultra vires and null and void to that extent. None of the said proceedings or orders can legally bind or affect the rights of plaintiffs.

11). Cause of action accrued some time in December 1938 when defendants 1 to 3 constructed the brick wall with windows and door therein and sought to interfere with the rights of plaintiffs. As the Province of Bombay is a party this suit is filed in this Court.

12). The plaintiffs pray as follows:-

a). Be it declared that plaintiffs have a right to seat~~ing~~ and instal~~ling~~ Shree Kama Deva and hold festivities in connection therewith during the Holi Festival in the months of Phalgun every year, and to take Darshan of Shree Basawanna Deva, and worship the said deity every day throughout the year, and ~~a~~ consequential permanent injunction be issued to defts 1 to 3, as below:-

i). that they should not interfere or obstruct in any way the plaintiffs in the ~~xxxkxxxxx~~ exercise of their right to take Darshan of Shree Basavanna Deva and to worship the said deity every day of the year.

ii). that they should not interfere or obstruct in any way the plaintiffs in seating, and installing Shree Kama Deva in Phalgun of every year, and holding the festivities in connection therewith.

iii). that they should remove the wall, windows and door fixed on the eastern side of suit C.T.S.No.1185.

iv). that they should not construct any structure or do any thing which would in any way interfere with the aforesaid rights of plaintiffs.

b). Any other reliefs to which plaintiffs may be entitled in law, justice and equity.

c). All costs of suit be awarded.

Dharwar,
9.-7-1943.

Pltfs

This relates to Dharwar Civil Suit 405 of 1943. The disputed property is C.T.S. No.1185 of Gadag, measuring about 37 sq. yards, and partly occupied by a structure. An image of Basavanna, held in reverence by Lingayats, is installed there during Holi in connection with the public celebration of that festival; and for that reason the property is known as Kamana Gudi (temple of Kama)

2. During the City survey inquiry of 1914 defendant 1, Karviraya, who holds the adjacent property bearing C.T.S. No.1186, appears to have laid claim to the Kamangudi, but the claim was rejected; and the property was held to vest in the Crown. Nevertheless it seems to have been leased to the said defendant in 1916, and the lease stipulated inter alia that the lessee should not build upon the open portion of the site and retain it so as to be accessible to the public. In 1938 complaints were received to the effect that defendant 1 had erected structures on the plot and thereby closed it and the Collector passed orders forfeiting the property. On appeal, the Bombay Revune Tribunal held that the structure was not proved to have been recently built, and that there was no breach of the conditions of the lease and accordingly set aside the Collector's orders.

3. Certain persons acting on behalf of themselves and the public of the locality filed a suit apparently against defendants 1-3 in the Gadag Court, but the Court held that Government was a necessary party. Hence the present suit in the Court of the First Class Sub-Judge against Govt. and other defendants for - (1) a declaration of their right to instal an image of Kama and hold festivities on the suit site during Holi, and to offer obeissance to the image of Basavanna at all times. (2) Consequential injunction.

4. The claim now affirmed appears to be well founded. The site appears to have been used for a long time for public purposes, and Government has not hitherto asserted proprietory title thereto to the exclusion of the public rights. The Enquiry Register appears to suggest that the

land was held to vest in Government on the ground that it was public property. Public rights over the land were recognized and protected by the lease granted to defendant 1, and the Collector's recent order was based on the ground that defendant had violated those rights.

5. Thus the Government has consistently acted on the assumption that the public has certain rights over the land. It is not interested therefore in denying the rights claimed by the plaintiffs. It is doubtful, in view of the finding recorded by the B.R.T. whether defendants 1-3 can be said to have done any overt act so as to give rise to a cause of action for a suit as at present framed. Government may therefore state that it is prepared to abide by the decision of the Court on the main issue as between the plaintiffs and defendants 1-3.

6. It may be pointed out that defendant 1 has recently tried to affirm his independent title to the suit land (see his petition to the Tribunal) and it is possible that he may claim title in this suit. In case he does so, the District Government Pleader may be asked to urge

(i) that defendant 1 is estopped from claiming tit to the land as against Government since he holds it expressly under a lease from Government since over 25 years: s,116 of the Evidence Act, 1872;

(ii) that his claim is barred under section 37(3) Bombay Land Revenue Code 1879, as it was inquired into and rejected by the City Survey Officer;

The District Government Pleader may move the Court to frame preliminary issues on these points before an issue as to the question of the title of defendant 1 is raised; and if the latter issue is raised, he should obtain instructions from the Collector as to the evidence to be led on behalf of Government and if necessary further instructions from the R.L.A. on any point of law involved.

7. As it is proposed not to contest the plaintiff's claim but to leave the matter to the decision of the Court, it is not necessary to prepare a brief or to sanction defence of the suit. The District Govt. Pleader may be

instructed to file a written statement on the lines of the appended draft, and he may be instructed as suggested in para 6.

This note was prepared by me Murdeshwar.

Dn
1/5-

RLA Rama 10/5/44

In the Court of the First Class Sub-Judge,

at Dharwar.

Civil Suit No.405 of 1943.

1. Subbanna bin Sangappa Hubballi. 2. Nilkanthayya Dandayya Anegalmath. 3. Totappa Sangappa Bulla. 4. Sannabasappa Muddappa Koti.	Plaintiffs.
V/s	
1. Karaveerayya bin Veerayya Kalwad. 2. Ishwarayya Karweerayya Kalwad. 3. Shekharayya Karaweerayya Kalwad. 4. The Province of Bombay.	Defendants.

The written statement of defendant 4 is as follows:-

1. The suit property described in para 1 of the plaint vests in this defendant under section 37(1) of the Bombay Land Revenue Code 1879.

2. In the City Survey held in 1914 and 1915 defendant 1 appears to have laid claim to the said property, but it was held to vest in this defendant as aforesaid.

3. It appears that in 1916 the Prant Officer granted a lease of the property to defendant, subject to conditions, inter alia, that the lessee should not erect structures on the open land and must keep the place open for public reserving to Government the right to forfeit the lease in case of breach of any of the conditions. The first defendant executed an agreement accordingly and holds possession as a lessee attorning to this defendant.

4. Recently complaints having been received to the effect that defendant 1 had committed breach of the condition requiring him to maintain the place open to the public, the Collector on enquiry found that the complaint was justified and by his order No.N.C.R. 245 dated 21st August 1939 directed forfeiture, and eviction of the first defendant. On appeal the Bombay Revenue Tribunal by its order No.0-256 dated 28th May 1940 set aside the

Collector's order as the structures said to have been erected by defendant 1 in breach of the condition of the lease were not proved to have been recent; and directed that he be allowed to remain in possession under the lease granted to him. This defendant has given effect to this order.

5. With respect to the averments in para 3 of the plaint, this defendant says that the papers relating to the City Survey Inquiry indicate that the suit property may be subject to some public rights. This defendant is not aware of the precise nature and extent of the said rights and is prepared to abide by the decision of the Court in that behalf. The lease granted to defendant 1 contained an express provision for securing to the public such rights as they had by custom and usage with respect to the suit property.

6. It is submitted that the costs of this defendant be awarded.

సంకుమానాము

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నెం॥ 402

ధారవాహ రంగీచవగన్ నబాబ్ జఫర్ శీఁఖోళ్ళ

చుమొత్తుం ధారవాహ ఇళ్ళి

లా శ్రీ. ఇవాణి చుంకరమీ వయుకం యుక నేనంగళ్ళిస్తే

(ఎ) శాబ్ధింణాం తం॥ని నేంగన్ది రుబ్బళ్ళ బ్యళి. చిశ్వక్తమున

క్రొచ్చిది చయుగ బొం. శ్లు అక్షళ్ళనెలాళ్ళ. నాగుకుగన.

(బి) శిలుశంతయ్యా రంతయ్యా అనుగా చుంక బ్యళి.

లంగాయుళ్ళ. చయుగ 3వ శ్లు బంధిస్తే బోదుంటాదు. నాగుగరు.

(3) తొలుచ్చి వేంగచ్చా బాళ్ళా బ్యళి లంగాయుళ్ళ.

చయుగాళ్ళం. శ్లు బంశీలుస్తే. నాగుగరు.

(శ) వేంకటనచ్చా మూర్తచ్చా శీలు బ్యళి లంగాయుళ్ళ.

చయుగ 3వ శ్లు బంశీలుస్తే నాగుగచుగన.

నవరిలయుంచగు నివేదనలకళ. అభిరుచులు రచనగళ్ళ

రళి రళ్ళిను నివేదన జనక. (Public) రచయితగళు

చుత్తు

నూర్ధ.

(ఎ) శ్రీరంగరాయ్ళ తం॥ని రంగరాయ్ళ కాలదాళ్ళ బ్యళి. లంగాయుళ

చయుగ ధన్య. శ్లు బన్యవడా రు నాగుగరన. తాగుగన.

(బి) తిశ్వక్తయ్యా శ్రీరంగరాయ్ళ కాలదాళ్ళ బ్యళి లంగాయుళ్ళ.

చయుగ 3వ. బుక్కోన శ్వప్నడకారా చూస్తార నాగుగరన.

తాగుగరన.

(3) శీలుశంతయ్యా తం॥ని శ్రీరంగరాయ్ళ కాలదాళ్ళ బ్యళి.

లంగాయుళ్ళ. చయుగ 3వ శ్లు బాగన నవకళి. నాగుగుచన.

(శ) వి. బ్రాంతివ్వ ఉచ్చో బ్యాంచి. (బ్రాంచిళ్ళ నెర్ధ కా.శ)

శ్రీ. శ్రీనివాసుల తా ॥-9-1963.

శ్రీ చేలుళ్ళ 28-9-1963 రూ 80/-

వాకిలు కొలతలో తేడాగమన విషయం:-

(2) వీరి అమ్మ దగ్గరున్నవారిలో ఒకరు గిరిజమ్మగారిలో ఒకరు వీరి C.T.S.No.1185 లో ప్లాట్ నెం. 37-3. ~~[illegible]~~ అంగ దివసి వారిచ్చిన ప్రకారం ఇంటి అనెక్సీ అంటే ఇరు భాగాలు చూచినట్లే మళ్ళా బాత్రూంలో రన్నే. వచ్చినట్లే ప్రతివాదులు సేనిలు నవీనమ్మగారు C.T.S.1186 దక్షిణాన్నే ఎటాచ్డ్ అక్కెంబిచారు మరి. అంటే ఇంటి చుట్టూ ఇరువైపులా కాపుకడుతూ అంటూ వీరు.

(3) మీలాటి ఎన్నో కేసుల్లోనూ కమిషన్ కూడిన చట్టాన్ని వచ్చినట్లయితే దత్త ప్రతివాదులు సేనిలు నవీనమ్మ సోదరుల్లో ఒకరు వాళ్ళ సోదరుల్ని పంపుతారని. ప్రతివాదులు ఇద్దరు ఒకే ప్రతివాదులు 2-3 ప్రతివాదులు అవిభక్త కుటుంబీకులు అనబోకు. వీరిరు ప్రతివాదులు సరిగా అడుగుతూ ఎలా — పెళ్ళి నవీనమ్మలు దళిత క్రిస్టియన్లు చూడొచ్చు అంటూ

(3) దావాలో అన్నెక్షరాలలో కొలతలు ఉంటే అంటే వీరిద్దరు సివిల్ జడ్జిగారు ప్రతివాదులు స్థిరాస్తులు కొలుస్తారు దావాలో అన్నెక్షరాలు కూడా ఇరువైపులా చర్చలు జరుగుతాయి. ఇరిద్దరి దావాదులన్నెక్షరాల్లో ఒకటి చట్టాన్ని కమిషన్ ప్రతి మీ వీరు ఇద్దరు వీరులేదన్నిటిలో రెండు-మీ జడ్జిగారు వీరులు వీరులవరకూ కోర్టులో రాగానే చట్టాన్ని తొలగించాలి చూడు వీరు తరువాత అన్నెక్షరాలు చట్టాన్ని ప్రతిపాదిస్తారు. మరి దావాలో అన్నెక్షరాల C.T.S. 1185-లో చట్టాన్ని ఇంకా 3 ప్రతివాదులు ఎలాగా అన్నిటిని ఇద్దరు (C.T.S.1186) ఇరువైపుల్లో చేయగలిగి తొలగించాలి ప్రతివాదులు దావాలో అన్నెక్షరాల C.T.S.1185-లోని అలాగే చూడాలి చట్టాన్ని చూడరాదు అని. ఎన్నాళ్ళకో ఇచ్చిన్నట్లు C.T.S. ఎలక్షన్ యుగంలో కాలంలో ఎన్నికలు ప్రతిపాదించిన ప్రతివాదులు అన్నెక్షరాలు చూడొచ్చు అని అంటే మళ్ళీ దావాలో అన్నెక్షరాలు

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నరకాలి చుట్టూ ఆస్తి చేస్తికి అంతా రక్షాచ్ఛ అయ్యాయి. మంత్రి నరకాలి రక్షాచ్ఛం తరువాత ఆంజనేయ లచ్చిబాయి నరకాసురుడి విచారణ అప్పించుకున్న ఇంచక్కగా భూభాగి తీసుకుని భక్తిమించి కొంచెం శక్తిని చళచక్కు తెచ్చుకొంటారు అనే. ఇలగిక్కడ కూడ నివసిస్తున్న బానాదిరుపతి వారు తమకే ఇరుగుపొరుగున్న కళ్ళు లంక్రీ కొళాయిస్థాపించుకుని నిద్రి జనారణ్యి కాపుకున్నవ్వు మరియు చుట్టూ చక్కగా రక్షణ ఏర్పాటు చేసుకున్నారు బవచంద్రశేఖర దశరథ మూడు భక్తి శక్తి ప్రతిపత్తి చూపుతూ చస్తికి కొనసాగుతున్న కాపుకున్నవ్వు

విచక్షణాధికారం.

(బి) దావా-ఆకారకోదండ శ్వేతబట్టి రూ/- రు చొప్పున కోర్టుఫీజు అభిరక్షణలో నిర్ణయించడమైనది.

(ఇ) వాదోపవివాదాలు:-

వాదిప్రతివాదుల పేరునవేనామాలు ఎంతమంది ఉన్నారో వారిని ప్రతివక్షనికి ప్రతివాదులను శ్రేణిపరచడం కోర్టు దర్శనమునకు చేర్చడానికి మూడవ పక్షానికి చెందిన వ్యక్తులను ఫిర్యాదుదారుని సాక్షులను కొంతమందిని కొంతమంది లక్ష్యపక్షులుగా నిర్ణయించడం జరిగింది ఇంతవరకు ఉన్నట్లు తరువాయిలో కేళీచిత్రం ద్వారా ఎ-1 - 3 ప్రతివాదులకు సమన్లు జారీ అవ్వాలి.

(ఉ) వాదిప్రతివాదులకు సంబంధించిన అనారోగ్యాలను ప్రతివక్షనిర్ణయాలను ప్రతివాదులను శ్రేణిపరచడం కోర్టు దర్శనమునకు తీసుకొనివెళ్లడానికి మూడవపక్షానికి ఎ-1 - 3 ప్రతివాదులు మరియు వారిలాయిలకు సాక్షులకు నిర్ణయించిన తేదీలలో ఎవరు ఏ రకంగా కూడా హాజరుకాకపోతే వారిపై కోర్టు ధిక్కారం కింద నేరం జరిగినట్లుగా పరిగణించి తగిన చర్యలు తీసుకోవడం జరుగుతుంది.

(ఎ) ఇరుపక్షాలు తమ తమ వాదనలను కోర్టుకు తెలియజేయడం.

(ఐ) వాదిపక్షం తరపున వాదించే న్యాయవాది.

(ఒ) ప్రతివాదిపక్షం తరపున వాదించే న్యాయవాది.

(ఓ) ఇరుపక్షాలు తమ తమ వాదనలను కోర్టుకు తెలియజేయడం.

(ఔ) వాదిపక్షం తరపున వాదించే న్యాయవాది.

(అం) ప్రతివాదిపక్షం తరపున వాదించే న్యాయవాది.

ఈ దాఖలు మీ.ఎమ్.ఎ.వో. బదలు ఎవేటన్ లేక
జిల్లా రాబాండ ఈ మీట్లు కొనుగోలు మొత్తం ఇవ్వకుండా
చాలాంగం ఆఫీసర్ళు — మీ.జి.చుకుండి చలికు ఇవ్వ
చుంట్లు ప్రతివాదిమ ఆఫీసర్ళు మీ.నరగశ్ర ఇవ్వ
వ్యవస్థలు బంధరయిన మంచుచునామీ చూడరి.
వ్యవస్థలు చరిత్రయంగా.

(1) కొమనను డి ఎంబు మీదనిండ శశిశిశ్వల్పడు
చ చాంబాలుశ్రీమంద నెలనవేశ్వంబరం ఎంలో
అధికరళ్ళు ప్రతివక్షిగా ఛాల్డగా చూపరళ్ళు చెరు చివక
శో చేయుశ్రంతరచాశి కొచుట్టినన్న శుంచినట్లే చుట్లు
అ భాల్లు చూచి ప్రకార చుట్లు అవశ్యచ్చ లుఫ్ట్ చ వక్షిస్తే
చూడట్లే నరగశ్ర చుంచనికాల్చ ఉర్శించుళ్ళుచ్చ ఉళ్ళి
బాబారర్శించుళ్ళుఆట్లే ఇంచు నాచనజనిశ్ర.మీ చుకాల
నిచుర బంధరళ్ళు ఉంది. ఉంటా మాలచూంగ్ ఉంగాయిచెరు
ఆక్కడి.

(2) ఎంతవల్లిదే దావారలశ్రీంచుళ్ళు స్థానిచుర త్రీ బవకం
లాభిచరు శివనజనిశ్ర చీచరు అంతా నిశ్రాంచుమాచేశ్రీంగ
నెల్రి చీచరరశన చచూచవస్తే చూడట్లే ప్రతివక్షిగ
చూచ కాలళ్ళు చూడట్లే కర చాలీచీరళ్ళు ఉరి.
(3) కారణ నరగ భూనళ్ళు చావచాశుచ ఇంచుగ జవశి
బనచుంటచీచర రశనన్లే కాను ఎంచ్యోగాదళ్ళు బశ్రీ చ్రే
కార కొచుంటినన్న శుంచినే లుఫ్ట్ చశీచస్తే చూడట్లే
చూచుచరళ్ళే ఎంచుచశీచాలిచిలిం చరళ్ళ క్రోచూచిగారు
ఉంట్ల. అధికర ప్రతివాదించుశీరాయం అశీచా చూచిరు
ఆక్కడి

(4) అధిచత్రినిర బంచు ఆంగళ్ళు కొచనచేశకం ఎంలో
రళ్ళు చూచన భూనళ్ళు ఆచ్చుకట్టినిర తోడి శిచెళ్ళ చ
భూనుచరళ్ళు చుట్లు చిలూగనచోలశీంచుళ్ళు (చూచనచేశ్ర చ
చుంటాని చరభ్యుం) ఎంచ నీచచీయన్న ఎంశి. వచరాలాంగాం

~~ఈ~~ ఎంత ఉన్న ఎంత పోలీసు స్టేషన్ కు చూడటానికి
అనుకూలంగా ఉన్న ఆ సామాను బేరీజు. ఎంతో అనుభవం ఉన్న
ఆ వాచీలో ఉంచుకుంటారు కానీ వ్రతి వాచీలు
ఆసక్తిగల. వాచీలు పోలీసు కు మాంత్రిక రంగాన్ని ఉన్న
ఆ సక్తి పెంచుకోవడం చాలా ఆ యుని ఉపయోగ
పెట్టడం ఉన్న ఎంత వ్రతి వాచీలో కొంత ఎంత
ఇవ్వాలి.

(7) వాచీలు ఆ యుని ఆసక్తి పోలీసు విభాగాన్ని ఎంత
3 వ్రతి వాచీ కొంత ~~ఉన్న~~ ఎంత చూడాలి.
చూడ్డం అంటే వ్రతి వాచీలు ఆ యుని అంత పెట్టడం
గమనించాలి.

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(1) ఉదయం 6-2-0.
(2) చుంబకాన్ని పెట్టిన 0-8-0
(3) బాలుగురు కానిస్టేబుళ్ళ 4-2-0.
(4) వాచీలు దాచిపెట్టిన 9-0-0.
పెట్టడం.
(5) దాచిపెట్టిన వాచీలు 15-0-0.
వెంటనే పట్టుకోవడం
minimum.
(6) వ్రశ్నించడం. 11-0-0.
(7) భోజనం ఆపడం 32-10-0.
(8) కొంచెం సేపు పడుకోవడం 2-12-0
(9) ఆరుగురు పోలీసులు 27-0-0.
కోర్టుకు

(10) వాచీలు పట్టుకోవడం 2-0-0
ఆయుధం చేతిలో వ్యూహం.
108-2-0

(1) ఉదయం ఆహారం ఏర్పాటు చేయడం - -
ఖర్చు కొంత
(2) ఉన్న బల్బులు మార్చడం 0-8-0
(3) దాచిపెట్టిన వాచీలు వివరాలు పట్టుకోవడం
ex 16-18-31-42-49-53-59-95 4-12-0
(4) దాచిపెట్టిన వాచీలు పట్టుకోవడం ex 45-46 0-0-0
(5) పట్టుకోవడం 15-0-0
(6) చేతులు కట్టడం పట్టుకోవడం ex 41- 4-0-0
(7) దాచిపెట్టిన వాచీలు ex 60-61-62-63
64-72-
(8) కొంచెం సేపు పడుకోవడం 4-6-0
(9) పడుకోవడం కోర్టు వ్యూహం
ex 50-56-57
42-0-0
చూడ్డం 86-10-0

దాచిపెట్టిన వాచీలు
ex 16-18-31-42-49-53
59-95 4-12-0

ఖర్చు 81-14-0

ఈ పోలీసు వారి గారవానికి ఉపేంద్రం చూపడం లేదు అందరూ వారిని
వ్యక్తిగతి చూడటానికి పోలీసు చొక్కా చూడటం లేదు

3/11/46
ఏ. వీరు
13/11/46

Civil Appeal 115/45.

Ex.1.

In the Court of the District Judge, Dharwar.

At Dharwar.

Appellants:- 1. Karavirayya Virayya Kalwad, caste Lingayat, age 66, occupation trade of Gadag.

2. Ishwarayya Karavirayya Kalwad, age 33, caste d occ--Kanarese-school teacher of do.

3. Shekharayya Karavirayya Kalwad age 31, caste .. occupation private service of do..

(Original defendants 1 to 3)

Versus.

Respondents:- 1. Subbanna Sangappa Hubballi, caste Vishwakarma-Brahmin, age 51, occ-goldsmith of Gadag,

2. Nilkanthayya Dandayya Anigalmath. caste Ling, occ-begging. age 36, of do..

3. Hotappa Sangappa Bulla, caste do. age 41, occ agri.; of do

4. San-basappa Muddappa Koti age 36, caste , occ-and residence do..

The above named respondents 1 to 4 on their-behalf and on behalf of Public of old Bazar of-Gadag (original plffs 1 to 4).

5. The Provincial Government of Bombay.

Pri deft No.4.

Claim :- Rs 80/- for court fees and -- jurisdiction.

The above named appellants beg to appeal from the judgment-nd decree of the F.C.Sub-Judge Dharwar passed in L.C.Civil suit-o.465 of 1943, on 17/3/1945, and set forth the following grounds-of appeal, viz.,

1. The judgment and decree of the lower Court are contrary to law and evidence in the case.

2 Under the circumstances of the case and on the evidence-on record, the lower Court ought to have dismissed-

dismissed the claim of plaintiffs.

3. The lower Court should have held that plffs have not proved that the Hindu public of the locality have a customary right to instal the image of Kama and to perform the Utsava of the said image.

4. The lower Court should also have held that the image of Shri Basveshwar is not a public image and that the public have no right of worship of the said image

5. The lower Court should have held that the right of the public, if there existed any, was extinguished byadverse possession of the defts.

6. It should have been heldthat the suit isbarred under the Revenue Jurisdiction Act.

7. It should have been held that a right to instal ' Kama and perform the Utsava is not a right that can be recognised by a Court of law.

8. The lower Court erred in attaching too much importance to the building being called the ' Kaman Gudi That fact perfectly consistent with private worship and does not create any rights -- in favour of the public

9. The infercneses drawn by the lower Court from its observations are not correct In this connection, it may be noted that the lower Court should not have relied upon the observations made by the City survey enquiry Officer in 1914.

10. The lower Court erred in holding that the wall, windows, and the door in question are recently built

11. The history of the property and the erection of the building has not been properly appreciated

12 The admitted fact that for some years past the alleged rights have never been exercised has not been given due weight to.

13 The sale by Government to the defts and the circumstance under which the sale took place have not been properly considered.

14. The decision of the revenue tribunal and the effect thereof have been ignored.

15. The ordinary and the usual clause in the sale deed relating to the public rights that may exist has been given undue importance to.

16. The lower Court should have held that the Municipal tax- is paid regarding the poperty in dispute

17. The voluminous and the reliable evidence for the defts- has been wrongly discredited while the interest evidence- for the plffs has been wrongly credited.

18 The lower Court erred in ordering the eastern wall, the door and the windows fixed in it and also the partition wall to be pulled down.

19. Proper presumptions are not drawn and probabilities- are not rightly weighed.

ated 10/4/1945. Sd... Pleaders.

Copy was applied for (in person) on the (21st) Twenty first April 1945

Clerk of the Court.

It was ready for delivery on the (30th) Thirtieth April 1945

Clerk of the Court.

It was delivered on Thirtieth June 1945

Clerk of the Court.

95-00
17-13-0
4-7-0
22-8-0

Received on 11-9-1943.
Registered on 25-9-1943.
Decided on 17-3-1945.
Duration 1 year, 6 months and 6 days.

In the Court of the F.C.Sub-Judge, Dharwar.
at Dharwar. Ex. 101.
L.C.Civil suit No. 405 of 1943.

Pleaders.

Mr.Jamkhandi

1. Subbanna Sangappa Hubli of Gadag.
2. Nilakanthayya Dandayya Anigalmath of Do. ... Plaintiffs on their behalf and on behalf of public of old Bazar of Gadag.
3. Totappa Sangappa Bulla of Gadag.
4. Sanbasappa Muddappa Koti of Gadag.

Against.

Mr.N.S.Gadagkar

1. Karvirayya Virayya Kalwad of Gadag.
2. Ishvarayya Karvirayya Kalwad of Gadag.
3. Shekharayya Karvirayya Kalwad of Gadag.

Mr.Malapur

4. The Provincial Government Bombay ... Defendants.

Claim Rs. 80/-

The plaintiffs sue to obtain the following reliefs :-

(a) A declaration that the members of the public of Gadag residing in the old Bazar area have the right of taking Darshan and performing the Puja of the image of Shree Basavanna placed in city survey No. 1185 and to place the image of Kammanna every year in the month of Falgun and to perform the Utsav of the said image.

(b) A permanent injunction restraining the defendants 1 to 3 from causing any obstruction to the members of the public in exercising their rights mentioned in clause above.

(c) A mandatory injunction directing the defendants 1 to 3 to remove the wall, the door and windows built and fixed by them on the eastern side of the city survey number 1185 and a prohibi tive injunction restraining them not to build any new wall.

(d) To recover costs of suit.

Plaintiffs allege in the plaint that the building comprised in city survey number 1185 within the Muncipal limits of Gadag was called since times immemorail Kamanagudi, that the

members of the public used to install the image of Kam every year in the month of Falgun in the said premises, that there was an image of Shree Basavanna in the said premises since a along time, that the people residing in the locality were taking Darshan of the said image and doing puja daily throughout the year, that to the west of city survey number 1185 there was city survey number 1186 in which the defendants 1 to 3 reside, that taking advantage of the proximity of their residential house to city S.No. 1185 they encroached upon it began to make vahivat of it, that at the time of the city survey inquiry made in the year 1914. the city survey officer held that the defendant No. 1 had encroached upon city S.No. 1185 which was Government property, that thereafter the defendant No. 1 has purported to take city S.No. 1185 from the Government on lease for a period of fifty years subject to certain conditions and restrictions that inspite of this fact the members of the public were exercising their ageold customary rights of taking darshan of the image of Basav and installing the image of Kam in city survey number 1185, that in the year 1938 for the first time the defendants caused obstruction to the holding of the Utsav of the image of Kamanna which was installed as usual, that the matter went to the Police who removed the image from city survey No. 1185 and prohibited the holding of the Utsav, that at about that time, the defendants built a wall on the eastern side of city S.No. 1185 and fixed a door and two windows in it thereby prevented the members of the public from taking Darshan of the image of Shree Basavm that upon an application made to him by the members of the public. The Collector of Dharwar cancelled the lease granted to the defendant No. 1 but the Revenue tribunal on appeal vacated the order passed by the Collector. Hence the suit to obtain the reliefs as mentioned above.

The suit was originally filed in the Gadag Court. There, it was held that the provincial Government was a necessary party to the suit. The plaintiffs had preferred an appeal to the District Court against the said decision but the order of the Trial Court was confirmed. The plaintiffs thereupon impleaded the provincial ~~provincial~~ Government as defendant No. 4 to the suit and made certain amendments in the plaint. The plaint was then returned to the plaintiffs for being presented to this Court. Accordingly, it was presented to this Court on 11-9-1945.

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The defendants 1 and 2 in their W. statement at Ex. 22 deny the allegations made in the plaint and contend that city S.No. 1185 forms part of their residential house, that the image of Shree Basav installed therein was their family God. that the members of the public have no right of Darshan or puja of the said image, that it was not a fact that the members of the public had a right and were used to instal the image of Kamanna every year in the month of Falgun and hold Utsav as alleged in the plaint, that an attempt was made for the first time in the year 1938 but upon a complaint by the defendant No. 1 the Police removed the image and prevented the holding of the Utsav, that city S.No. 1185 was in the possession and vahivat of their family since the time of their ancestors, that the public have no interest in it, that whatever interest though had, has been lost to them by the adverse possession of their family, that as the defendant No. 1 was a poor man he did not contest the decision of the city survey officer given in the year 1914 but compromised with the Government and took a lease for a period of fifty years, that whatever the rights of the Government may be under the lease, the public have no right over city survey number 1185, that it was not a fact that they built the eastern wall for the first time in or about the year 1938 and thereby prevented the public from taking Darshan of Shree Basav, that the plaintiffs were not entitled to any of the reliefs sought that the suit should be dismissed and their costs awarded.

The written statement of the Government is non committal (Vide Ex. 26). After mentioning certain admitted facts in paragraphs 1 to 4, the Gowernment aver in paragraph 5:-." With respect to the averments made in para 3 of the plaint, this defendant says that the papers relating to the city survey Inquiry indicate that the suit property may be subject to some public rights. This defendant is not aware of the precise nature and extent of the said rights and is prepared to abide by the decision of the Court in that behalf. The lease granted to defendant 1 contained an express provision for securing to the public such rights as they had by custom and usage with respect to the suit property".

Defendant No. 3 has adopted the W.S put in by the defts 1 and 2 in the purshis Ex. 23 given on his behalf. On the above pleadings tthe following issues were framed at Ex. 30 :-

Issues.

1. Do plaintiffs prove that the Hindu public residing in old Bazar area within the Muncipal limits of Gadag, have a customary right to instal the image of Kam (cupid) in city survey No. 1185 in the month of Falgun, every year and to perform Utsav (ceremoney) of the said image, as alleged in the plaint ?

2. Is it further proved by them that the image of Shree Basaveshvar in the said city survey number was a public image and that the public have an unrestricted right of worship and Darshan of the said image throughout the year ?

3. If so, do defendants 1 to 3 prove that the right of the public, if anv was extinguished by their alleged adverse possession of the city survey number 1185 as contended in their W. statement ?

4. Is this plea open to the defendants 1 to 3 in view of the decision of the city survey officer in the vear 1914 and the subsequent passing of a Kabulayat by the defendant 1 to the Government subject to the rights of the public over city S.No. 1185 ?

5. Have the rights claimed by the plaintiffs in this suit been extinguished by virtue of the decision of the city survey officer in the year 1914 ?

6. Is the suit barred by estoppel as contended by the defts 1 to 3 ?

7. If not, are plaintiffs entitled to the declaration and injunctions sought ?

8. Is the suit barred under the Revenue Jurisdiction Act.

9. What decree should be passed ?

Findings.

1. Yes. 2. Yes. 3. No. 4. It is open. 5. No.
6. No. 7. Yes, as per final order. 8. No. 9. As below.

Reasons.

The plaintiffs have filed this representative suit to obtain a declaration tnat the members of the public resident in the old Bazar area within the Muncipal limits of Gadag have a customary right to install the image of the God Kam in the suit premises - city survey number 1185 called Kaman Gudi - every year in the month of Falgun and to take Darshan and do puja of the image of Shree Basav sea[redacted]

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in the said premises. Their complaint is that the defendants 1 to 3 were interfering with the rights of the public and preventing them from exercising their rights. The contention of the defendants 1 to 3 who are father and sons is that city S.No. 1185 was their private property, that the God Basav seated therein was their family God, that there was no custom to install Kamanna as alleged in the suit premises and that the members of the public have no manner of right in or over city survey number 1185. The dispute between the parties has some history behind it and it must be stated for a proper understanding of the points involved in the suit.

It is an admitted fact that even to this day the building compromised in city survey number 1185 is called Kaman Gudi. It consists of two parts. In the back portion there is seated the image of Basav facing east. To the east of the image, at a distance of about 4 or 5 feet there is a wall with a door frame fixed in it. The front or eastern portion of C.S.No. 1185 consists of three Ankans At the present moment, there is a wall on the eastern boundary of city S.No. 1185 within a door frame fixed in the centre and one window on each side of it. The plaintiffs allege that the defts 1 to 3 got this wall built in the year 1938, that before that there were tatti walls put up in front of the southern and northern Ankans a and that the middle Ankan was open. The defendants 1 to 3, on the other hand , contend that there was a wall of stone to the east of city S.No. 1185 from the very beginning, that there was a door in it and that all that they did in 1938 was to replace the old door with a new one. To the west of city survey number 1185 lies city survey No. 1186, comprising the residential house of the defendants. There is a door to the said house facing north and at the present moment there is no wall separating or demarcating city S.No. 1185 with 1186. However, the ground floor of city S.No. 1186 is on a higher level than that of city S.No. 1185. I saw and inspected the two houses in the presence of parties and pleaders and my own impression is that the two buildings were or must have been separate in the beginning but subsequently joined with each other. The inner door of city S.No. 1186 faces east whilst the outer door faces north. There is a passage of about three feet width for going to the inner door from the outer door. In my opinion there must not have been a roof

over this passage in the beginning but a roof seems to have been put afterwards thereby connecting the two buildings. This is the conclusion I have come to after an examination of the two buildings despite the view expressed by the learned pleader for the defendants 1 to 3. I am supported in this view by the observations made by the city survey Inquiry Officer in the year 1914 in the order passed by him :- ' It is known as Kaman gudi' in the town till today and it is also mentioned as such in Ghar Nakash ' and ' Isamwar yadi' prepared in 1874 by the survey Department and also in census Register Ex. 12. From the extract of the census register of several years obtained from the Taluka record Ex. 12, I am satisfied that the Kalwad family has come into the occupation of the temple and also the house site since 1882-1883 only .... All the witnesse on behalf of Government state clearly that the temple comprised in the chalta No. (55) in which Kamanna was being seated formerly is public meaning the site vests in Government and the building on it was built by the public. This fact is corroborated by the negative statements of the witnesses of the encroacher that they do not know to whom the temple belongs and also by the extract of census register Ex. 12 and Ghar Nakash and Isamwar yadi of 1874 of the survey Department in which the site is mentioned as Kaman gudi - Devalaya just as other public temples were mentioned. From the above facts, I draw the following conclusion. The temple comprised in the chalta No. was built by the public on Government site just as other public temples, for seating " Kamanna ' and the space behind the said temple now occupied by the residence of the claimant Karviraya (defendant 1) was open ~~and~~ ~~xxxxx~~ formerly. There was only " Kaman Gudi" till 1885-86 and there lived in it Bhima Talwar in 1880-81, Lachmavva in 1881-82 and from 1882-83 Erayya Kalwad. The site was known only as " Kaman Gudi. Till 1885-86 and in 1886-87 it has ceased to be entered in the census register as ' Kaman Gudi' but has come to be entered as Irayya's house (Vide census register Ex. 12). From this, I am led to believe that open space behind the old temple was built upon in about 1885-86 and the temple was amalgmated into the house by Irayya Kalwad, the father of the present claimant, otherwise had there been his house besides the temple, the house too would have been shown in the cencus register. But that is not the case. From 1882-83 to 1885-86 Irayya Kalwad's name has been shown as occupying ' Kaman gudi' and from 1886-87 his name has been

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shown as occupying an independent house and the name of Kaman gudi is omitted (Vide Ex. 32).

It is clear from this that originally there was only the Kaman gudi i.e. the structure now comprised in city survey number 1185. Subsequently defendant No. 1's father built a house for his residence in the open space to its west which is now comprised in city S.No. 1186. Incidentally Ex. 32 goes to show that the father of the deft 1 came upon the scene in or after the year 1882-83. The house in city S.No. 1186 was built in 1885-86 or thereabouts. Till that year, there was only the building known as Kamangudi. In 1880-81, one Bhima Talwar was found to be living in the Kamangudi; one Lachamavva in the next year. It is only in and from 1882.83 that the name of the deft 1's father has come to be associated with the occupation of the Kamangudi.

In the opinion of the city survey inquiry officer, the site on which the building called Kamangudi was built belonged to the Government but that the building was erected by the public. But he seems to have come to the conclusion that for some years past, the temple or gudi had ceased to be used for the purpose of seating Kamanna and that Karvirayya (defendant No. 1) or his father Irayya has converted it into a residential building inspite of the fact that there was an idol of Basavanna therein. On this point, he observes as follows in his order:- ' The witnesses on behalf of Government Exs. 1 to 3, all state that public Kamanna was being seated in the Basavanna temple formerly . Of the three witnesses Ex. 1 is a Lingayat by caste i.e. the same caste as Karvirayya, the claimant. Ex. 2 are village officers and Ex. 3 Shrinivas Naik Umachigi, a venerable old man of the town. He is also a leading Panch of the Devasthan committe in the town. I feel no doubt in creditting their evidence although Karvirayya makes some worthless allegations against them. Besides the very name of the site " Kamangudi' shows that Kamanna was being seated there; otherwise there is no reason why it should be called ' Kamanagudi'. But it is a fact that the site has ceased to be used for seating Kamanna for some years past'. The concluding paragraph of his order reads as follows :- ' I therefore hold that the temple site is public and the house behind it is the private and ancestral property of Kalwad Irayya. But as the temple has been ceased to be used for the

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purpose of seating Kamanna, as it has been converted into a residence some years past and if the public or any body have not objected to its being used as a residence inspite of the idol of Basavanna therein. I think that it may not be just to evict him from the temple Kamanagudi. If he is willing to pay a reasonable rent he may be allowed to continue in its occupation".

Ex. 68 is a copy of the survey Inuiry Register. in Tabular form regarding city S.No. 1185 . In column No. 5, we find the words public Kamanagudi esisting from time immemorial. In the next column the entry is as follows :- Order. Public Kamanagudi Rent free; Collector's sanction to be applied for. Note: one Karvirayya Kalwad has unauthorisedly occupied this. He should be ousted. The entry in column 8 is to the following effect: ' Note, it is decided to belong to Government. But it has been used for the public purpose for a long time. Collector sanctions in his No. 97/9-1-1915". The entries in this register are not in accordance with the order passed by the Inquiry Officer. Whereas, he had suggested in his order that the building Kamangudi should be allowed to remain in the possession of Karvirayya if he was willing to pay reasonable rent; the entry in column No. 6 reads that he should be evicted. The entry in column 8 suggests that the Collector had sanctioned the use of the Kamanagudi for a public purpose and that on that account, it was to be rent free. Some how other, the suggestion of the Inquiry Officer, made in his order Ex. 32 that it should be continued ~~to pay reasonable rent~~, in the occupation of Karvirayya provided he was willing to pay reasonable rent, appears to have been accepted by the Revenue officers who gave the site ~~of~~ city S. No. 1185 to the defendant No. 1 on a lease for a period of fifty years at a rental of annas two per year and a premium of Rs 15 (Vide Ex. 34). The date of the order of the Inquiry Officer as given in column No. 4 of Ex. 68 is 9-12-1914 whereas the order of which Ex. 32 is a copy is dated September 1914. In as much as the entries in Ex. 68 do not conform with the decision in Ex. 32 and the suggestions made therein. There is reason to believe that the order in Ex. 32 was either reviewed subsequently by the Inquiry officer himself or by his superior officer. Any way we are not much concerned with it at this distance of time. Ex. 34 dated 31-8-1917 is the Kabulayat passed by the defendant No. 1 addressed to the Mamlatdar Gadag regarding the lease of the site of

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city survey No. 1185. On the reverse side of the Kabulayat is given the digram or map of city S.No. 1185 and in clause 3 it is stated " There is now a Kamanagudi on the said site (ಹಾಲಿ ಇದ್ದ ಕಮಾನಗುಡಿ ಸದರಿ ಜಾಗೆಯಲ್ಲಿದೆ.

Now, on 12-10-1938, some 14 influential residents of the old Bazar area of Gadag town made an application to the Collector of Dharwar complaining against the obstruction alleged to have been caused by the defendant No. 1 to the installation of Kamanna in the kamanagudi and to the worship and darshan of shree Basav in it. The contents of this application are as follows :- (Ex. 74).

(1). City S.No. 1185 is situated in old Bazar area of Gadag. The public of that locality used to install kamanna every year in Simga in the said city S.No. and worship it. There is a public Basavanna in the said premises. To the west of city S.No. 1185, there is city S.No. 1186. One Karvirayya Kalwad has encroached upon the site of city S.No. 1186 and built a house thereon and resides in it. The building in C.S.No. 1185 is even now called kamanagudi.

(2). At the time of the city Survey inquiry in 1914, C.S.No. 1186 was held to be the private property of Karvirayya and the site of C.S.No. 1185 as belonging to the Government. The Collector gave his sanction to it, in his No. 97/9-1-1915.

(3). It was also decided to evict Karvirayya from the said city S.No. 1185 as he had encroached upon it on account of the temporary discontinuance of the seating of Kamanna.

(4). Karvirayya applied to grant the site to him and the Revenue officers under the mistaken notion that the public have permanently abandoned the idea of seating Kamanna gave it to him on a lease for a period of 50 years. One of the conditions of the grant was that the lessee should not build upon the site. There is a stipulation that if he broke the said condition the land would be resumed.

(5). Karvirayya has broken the terms of the lease by erecting a structure and making use of it. He has, therefore, made himself liable for the termination of the lease and the resumption of the land.

(6). The public have decided to install the kamanna

in the said city S.No. as before (ಮು.ದಿ.೨೯) during the Simga. There is no other place in the locality for the public to seat a public Kamanna. Karvirayya says he would not allow Kamanna to be seated in city S.No. 1185 as he had purchased it from the Government. As he has broken the terms of the grant, the land should be resumed and granted to the public.

The Collector got an inquiry made and passed the following order: The Collector hereby orders that C.T.S. plot No. 1185 measuring 37-3 yards should be forfeited to Government as required by condition No. 6 of the agreement and Mr. Karvirayya Verayya Kalwad be evicted under section 79 A of the land Revenue Code from the site. The lease in question should be cancelled (Vide Ex. 40). Against this order, Karvirayya appealed to the Revenue Tribunal (Vide Ex. 37). The Revenue Tribunal passed the following order on 28th May 1940:-

" It is not clear upon the record and the inspection of the commissioner, southern division shows that the building now in question is not proved to have been recent as to be a breach of condition of the lease in favour of the appellant. The appeal is therefore allowed, the order of the Collector, No. N.C.R. 245, dated 21st August 1939, is set aside and the appellant will be allowed to remain in possession under the lease granted him " (Vide Ex. 35).

The Collector's interpretation of the lease was clearly wrong. He started on the assumption that the site was vacant at the date of the Kabulayat, that the lease prohibited the lessee from erecting a building on the site, that the latter has created a building contrary to the terms of the lease and thereby incurred forfeiture and that therefore the lease should be forfeited and the lessee evicted. As a matter of fact there was building already on the site of city S.No. 1185 since many years before the date of the lease. That fact is not in dispute in this suit. The defendant No. 1 had done nothing by way of construction at the date of the application Ex. 74 . So the allegation made in para 5 of the application that he had erected a building on the site after the date of the lease was not true. The Kabulayat Ex. 34 is in printed form. Clauses 3 and 4 are important. The printed clause 3 reads :- ' Within two years from this day or within such period as decided by a competent authority, I shall erect a permanent structure upon the site'. This is scored out and in its place are written

The following words in manuscript.

It is clear from this that the printed clause 3 was meant to apply to open sites but as there was already a structure known as kamanagudi, the printed matter was scored out and the fact of there being a structure called Kamgudi mentioned instead. The printed clause 4 reads :- ' I shall keep open the portion of the site which I am ordered to keep open by the map on the reverse. This clause also did not apply to the lease in question because no portion of the site was vacant at the date of the lease; and as a matter of fact no portion was shown in the map which was to be kept unbuilt. The Collector's order was therefore wrong and the Revenue Tribunal was right in vacat ing it.

In his deposition at Ex. 96, paragraph II, the defendant 1 states as follows :- " To my knowledge, the building on city S.No. 1185 is called Kamangudi by the public. In the Muncipal records also, it is known as Kamangudi. In the fifty years patta given by the Government, it is called Kamangudi. But I cannot say why it is so called. I cannot say how the name of Kamangidi came to be given to the building in city S.No. 1185. I never protested against its being called Kamanagudi". The defendant No. 1 has produced a large number of Municipal tax receipts at Ex 38. The earliest is of the year 1895-96. Therein, the house for which, the tax was paid is described as Kamana gudi and the hasta is that of Irayya, father of the defendant No. 1. The tax paid is 8 annas. Till the year 1900, we find the hasta of Irayya mentioned in the receipts and from 1901 there is the hasta of Karvirayya (defendant No. 1). It is significant to note that the tax paid till the year 1915-16 is 8 annas only per year and that was for one structure only. From 1916-17 onwards the tax paid is rupee one i.e. 8 annas for the house to the west of the Kamanagudi and 8 annas for the kamanagudi itself. It appears that prior to 1916-1917 the kamanagudi proper was not taxed to house tax by the Muncipality. The tax paid till then was as a matter of fact, for the house to the west of the kamanagudi which was occupied by the defendant No. 1 as his residence. The city survey Ineuiry officer has shown in his order that the kamanagudi proper was in existence since before the year 1874 but that the house to its west was built some time after 1885-86(Vide Ex. 32). It appears that the site behind the kamanagudi was appartenant

thereto. The defendant No. 1's father was first brought in the year 1882-83 or thereabouts probabily for the worship of the God Basavanna. It is in evidence that the defendant No. 1's father had made an applica tion to the Muncipality in the year 1889 for erecting a chappar in the open site to the West of the Kamanagudi (Vide page 5, Ex. 32). So the house or chappar when built upon by the defendant 1's father was also called as known as kamanagudi in the muncipal records. Even though the house taxed prior to 1916-17 was described in the Muncipal receipts as kamanagudi. The structure really taxed was the house behind it and not the kamanagudi proper. when in the year 1916-17 the defendant No. 1 took the kamanagudi proper from the Government on a lease for a period of 50 years, the Muncipality taxed it also for house tax and that is the reason why from 1916-17 onwards. we find that tax doubled and two houses, Nos. 1874 and 1875 shown in the receipts as being separately taxed. This fact goes to show that the Muncipality had exempted the Kamanagudi from the payment of house tax in the same way as it exempted other public and charitable or religious buildings. That is a circumstance in favour of the plaintiffs and against the defendants 1 to 3.

I think there is no objection to accept the findings of fact arrived at by the city survey inquiry officer in the year 1914 which have been embodied in his order.

They are :- (1) The building known as kamanagudi or Devalaya was built at the expense of the public upon a site belonging to no private individual and therefore belonging to the Government (2) The building was erected for the express purpose of seating Kamanna in it (3) Kamanna was as a matter of fact being installed in the said building (4) there was the image of Basavanna in the building for a long time (5) It was in the year 1882-83 or thereabouts that the deft 1's father came to be associated with kamanagudi (6) It was in 1886 -87 that he built a structure to the west of the kamanagudi for his residence.

Now, it is an admitted fact that the deft No. 1's father was worshipping the image of Basavanna in the kamanagudi. He was a pathapati. He has been so described in the Muncipal receipts Ex. 38). whose main duty is to worship the Gods and images of the

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the Lingayat community. I therefore see no difficulty in accepting the testimony and suggestion on behalf of the plaintiffs. That the defendant No. 1's father was brought in by the public for the worship of the image of Basavanna. I entirely disbelieve the defendant No. 1 when he states that his father installed the image of Basavanna. When asked why his father should have installed such a big Basavanna, his reply was that he cannot say. I do not think that a mathapati who owned no property. Whatsoever and who depended on charity for his maintenance would every think of installing a big Basavanna in a public place. It appears that the Basavanna was there from the very beginning ..... because it was there, the building was made into two parts i.e. one inner apartment for the image of Basavanna and the outer for seating Kamanna.

In the opinion of the Inquiry officer, the public had discontinued seating kamanna for some years past. He does not say that the public had permanently abandoned that idea. The oral evidence on the record goes to show that kamanna was not being seated annually but intermittantly. But the practice had never ceased. As many as nine witnesses have been examined on behalf of the plaintiffs including plaintiff No. 2. All of them without exception are men of status and position residing in the old Bazar area. Besides the oral testimoney, there is also some documentary evidence to show that kamanna was being seated now and then presumably in the suit kamanagudi. I shall now briefly refer to the plaintiff's evidence on this point.

Ex. 77 is one Rachappa Yellappa Shettar. He owns a Kirani (grocery) shop in the old Bazar area. Exs. 79 and 80 are his tippan books. The first one is for the year 1846-51 shake. On page 164 of the said book we find certain entries made on 18-3-1927 19-3-1927. 21-3-1927 and 22-3-1927 regarding certain articles supplied by him for the installation of Kamanna and the performance of its Utsav. The total value of the articles supplied comes to Rs . 9-4-0. He was paid Rs . 7-4-0 only and Rs two were credited as his own subscription for the kamanapatti. There are the Hastas of Subbanna (plaintiff No. 1) and others who took an active part in the installation of Kamanna. Of Course, the place where the kamanna was seated has not been stated in the entries but the

witness states that it was for the kamanna seated in the suit kamanagudi and I see no reason to disbelieve him. In as much as the witness has paid his own subscription, the kamanna must have been a public kamanna. Further, in as much as his shop is situated near the suit kamanagudi, it is more probable than not that the kamanna must have been seated in the vicinity of his shop. There is no satisfactory evidence to show that any other public kamanna is or was being seated in the vicinity although many suggestions were made on benalf of the defendants 1 to 3. The second book is for the years shake 1851-57. On page 104, of this book, certain entries have been made on Falgun Sudh 15, shake 1854 in the name of Yecharappa Gadag who is son-in-law of plaintiff No. 1. Articles worth Rs two have been sold of which rupee one was deducted for kamanapatti and rupee one paid. On Falgun Vadya 3, shake 1854 (1931) other articles have been purchased by Subbanna (plaintiff No. 2) and others for the same purpose. i.e. for the purpose of the kamanna. On the same page, there are similar entries for shake 1856 which have been carried over on the reverse of page 106. The witness states that all these purchases were made for the public kamanna seated in the suit Kamanagudi. Exs. 79 and 80 are merely tippan books and not regular khata and kird books. However I see no reason to suspect that the entries referred to above were bogus or falsely made.

Ex. 86 is Chanavirappa Ningappa Koti. He is a buisness man; pays income tax of about Rs . 500 per year and owns landed property assessed at about Rs . 400. His house is very near the suit Kamanagudi , He has maintained regularly kept and written account books. Exs. 88, 89 and 90 are extracts from his account books. Ex. 88 shows that he paid Rs . 4/- as his subscription for the instalation of kamanna on 22-3-1927 in his lane. The vernacular entry reads thus :- ಅಮಗಿದಾಪ ಖಾತೆಕ್ಕೆ ಮಲಗಿ ಲಂಚಂ ಕೈಣಿಯಂಬ್ಳ ಕಾಮಣ್ಣಾಕ್ಕೆಪ್ಪೆಗ್ಗೆ ಅಂಕಿಕ್ಕಿ ಕಡ್ಡಿ ಮಕ್ಕೆಕೆಂದು ಕಾಯಿ ಮೆಳ್ಳಿ ಮೈಕಡ್ಡಿ. His lane means the lane in which the Kamanagudi is situated. Ex. 89 and 90 show that he paid rupees 1-3-6 and Rs . 1-0-0 for the years 1931 and 1934 respectively. In Ex. 89, the hasta is that of Neelakanthayya (plff 2) and in Ex. 90 that of Yecharappa (plaintiff no. 1's son in law). The witness states that the moneys paid by him were for the installation of the kamanna in the suit kamanagudi and I see no reason to disbelieve him. This witness happens to be a director of the Gadag Urban Co Operative Bank since many years The defendant No. 1 has taken a loan from

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the said Bank on 18-1-1934 by mortgaging his house (city S.No. 1186) and also city S.No. 1185 i.e. kamanagudi (Vide Ex. 8). His application was recommended by the witness to the managing committee. From this circumstance, it was sought to be argued that the witness never considered city S.No. 1185 as being of the public ownership or that the public had any manner of right over the same. I do not think that that inference necessarily arises under the circumstances of the case. The witness had recommended the application for loans. It is not known whether the applications contained a description of the property to be mortgaged. Further, what the public now claim is only a right of Darshan or puja of the image of Basav and the right to seat Kamanna for five days in a year. They do not claim any right of ownership over the site which has been held to vest in the Government in the year 1914. Under the lease Ex. 34, the defendant 1 might be entitled to the occupation of the premises but the Govt had no right nor intention to interfere with the right of the public when it granted the lease to the defendant No. 1. Governments position is made clear by the ". statement put in at Ex. 26. Govt. is not contesting the claim put forward by the public. On the other hand, it is conscious of the fact that the public has rights over the suit Kamanagudi and it is willing to abide by the final decision of this suit.

Then, there is Shidramappa Mariyeppa Manvi(Ex. 83). He is a rich man, his house is close by. He states that kamanna was being seated in the suit kamanagudi . His one of the signatories to the application Ex. 74. Ex. 92 , Venkatrao Ramachandra Patil is Patandar Patil of Gadag. Ex. 93 is one Chenappa Parappa Malshetti. He is a member of the Muncipality . He pays income tax. He has signed the application Ex. 74 to the Collector. Both these witnesses state that the image of Basav was public, that people used to take darshan of the said image and that kammanna was being seated in the suit kamanagudi. The other witnesses are Exs. 75(plaintiff No. 2), 76 (Tuljan Ovaji Mandre); 82 (Totappa Sanbasappa Koti and 91 (Basappa Ayyappa Gavai).

Three witnesses were examined on behalf of the defts 1 to 3. They are at Exs. 97, 98 and 99. Ex. 98 appears to be a friend of defendant No. 2; Ex. 99 is a notorious bond writer of Gadag.

He is a professional witness and a most unscrupolous man who can be brought as a witness by any body and on any point. Ex. 97 is practically a man in the street. None of these witnesses are residents of the old Bazar area. I was not at all impressed with their testimony. In my opinion Exs. 97 and 99 are brought witnesses and Ex. 98 has come forward to oblige his friend, the defendant 2. Taking the oral evidence as it stands, I have no difficulty in making the choice. Generally, I believe the testimony on behalf of the plaintiff and disbelieve that of the defendants 1 to 3. What happened in Falgun of 1938 is common ground. The members of the public had installed the image of Kamanna in the Kamanagudi. There was some altercation between some of them and the defts 1 to 3. The matter went to the police. The latter, fearing breach of peace, prevented the holding of the Utsav &c. and the image was removed by the public. It is significant to note that the defendant No. 1 made his application to the Muncipality for permission to fix a door frame and windows on the eastern side of city S.No. 1185 after the application Ex. 74 was made by the members of the public to the Collector of Dharwar. The first application of the defendant No. 1 to the Muncipality is dated 18-10-1938 (Vide Ex. 73). The application Ex. 74 was made on 12-10-1938 i.e. six days earlier. It is important to note the language used in the application Ex. 73. After giving the boundary description of the Kamanagudi building city S.No. 1185 defendant 1 states :- " I want to fix a door and two windows on the eastern side of the house described above and I pray that you (chief officer) will be pleased to grant the necessary permission". It is not stated as now alleged that there were old door and windows and that all that was wanted was to replace them with new ones. That is what the defendant No. 1 stated in his deposition at Ex. 96 before the Court, but that is not what he stated in his application Ex. 73. Further it is not mentioned that the door and windows were to be fixed in an existing wall. It is simply stated that the door and windows were to be fixed on the eastern side of the house. The Collector who visited the site in 1939 has observed in his order :- " The Collector was convinced after personal inspection that the structure (meaning thereby the eastern wall) raised by Mr. Karvirayya was recent. Some of the bricks, stones, clearly showed that they were not old "(Vide Ex. 40). It would appear from this

that there was no pacca wall to the east of city S.No. 1185 and that the defendant No. 1 hurriedly got it built without obtaining the Muncipal permission after the application ex. 74 was made and with the Muncipal permission, got fixed a door and windows in it. If the Collector's remarks quoted above have any meaning they show that the eastern wall was recently built. Some sort of complaint was made about the nuisance to the defendants 1 to 3 and the female members of their family if a kamanna is allowed to be seated in the suit kamanagudi. The question of nuisance does not arise at all. The deft 1 having encroached upon the kamanagudi cannot be heard to complain of nuisance. It was formerly a public temple. There is no lawful origin to the defendant No. 1's occupation of the said premises. It was made possible by the proverbial lethargy indifference and carelessness of the public. Defendant No. 1's father was first brought in as a worshipper of the image of Basav. For 2-3 years he lived in the Kamana gudi premises. Then he built a chappar in the open site to the west which he converted into a house. After some time, he amalgmated the two structures and began to make use of both for his house hold purposes. That is how the defendant No. 1 and his father have enlarged their sphere of influence. As the structure was of the ownership of the public, no one individual took any personal interest in it. In 1914 when the city survey Inquiry was made, the defendant No. 1 was firmly established in the suit kamanagudi. Taking advantage of some personal rivalry between Seenappa Umachagi (a brahmin) and Mudappa Koti (a Lingayat) he placed before the city survey officer certain statements against the statments of Umachagi and the village orficers which led the said officer to hold that of late the seating of kamanna has been discontinued. But we have seen that it was never permanently abandoned and even after 1914, Kamanna was being seated now and then. Neither the decision of the city survey Inquiry Officer to the effect that the site on which kamanagudi was built belonged to the Government nor the subsequent patta given to the defendant No. 1 come in the way of the rights of the public to seat kamanna in the kamanagudi and to take darshan of the God Basav.

Taking all the facts and circumstances into consideration, I record my finding in the affirmative on issue No. 1. I hold on issue No. 2 that the image of Basav was a public God and

that all the Hindu inhabitants of the locality have right of darshan and worship. Admittedly, the puja of the said God is being performed by the family of the defendants 1 to 3 and it does not appear to be the intention of the plaintiffs to discontinue the services of the defendants family for that purpose. Now, coming to issue No. 3, my finding is that prior to 1938 there has not been any obstruction to the exercise of the rights now claimed by the public. The seating of kamanna is a matter of 4 or 5 days in a year. Even this is not resorted to every year without fail. The taking of Darshan of the image of Basav by the members of the public need not cause any nuisance. On the other hand, it is a source of income, because the devotees give some offerings, however petty it may be. When the public have a right, the question of nuisance cannot be allowed to stand in the way of the exercise of the said right. I record my finding in the negative on issue No. 3. My finding on issue No. 4 is in the affirmative. The Kabulayat Ex. 34 does not reserve any rights to the public. It only recites that upon the site of city No. 1185 . There stands a building known as Kamanagudi. The actual decision of the city survey officer is to the effect that the site belonged to the Government. He has not decided nor had he any right to decide the rights of the public, in or over the same. No doubt he has expressed some opinions on some points which I have already referred to but those opinions were not binding upon any body. My finding on issue No. 5 is clearly in the negative. As stated above, the decision was to the effect that the site belonged to the Government. That decision is now binding upon the public at this distance of time. If the public wanted to challenge the said decision it would have done earlier. The plaintiffs do not lay any claim in this suit to the ownership of the site. The Government have not taken any objection to the plaintiff's suit. Issue No. 8 was not pressed and so I record my finding in the negative upon it. It was not shown by the learned pleader for the defendants 1 to 3 how any estoppel arises in this suit. My finding on issue No. 6 is in the negative. In the result I pass the following order.

Order.

1. It is hereby declared that the members of the Hindu public residing in the old Bazar area within the muncipal limits of the town of Gadag have a customary right to install the image of kamanna every year in the month of Falgun for five days and to perform the usual

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necessary Utsav i.e. celebrations, in the building known as kamana gudi, now comprised in city survey No. 1185.

2. They have a further right of darshan and worship of the image of shree Basavanna seated in the said premises which is held to be a public deity, at all times of the year

3. The defendants 1 to 3 are hereby permanently restrained from causing obstruction to the members of the Hindu public of the locality to take darshan of the God Basav and to seat the image of kamanna and perform the Utsav as ~~described herein~~declared in clause I above.

4. The defendants 1 to 3 are hereby directed to pull down t the eastern wall to city S.No. 1185 and remove the door and windows fixed in it as also the partition wall put by them, east-west by which they have converted the northern one Ankan into a room within one month from today, failing which the plaintiffs may get the work of pulling down the said walls through the Court in execu tion proceedings and recover the costs from the defendants 1 to 3.

5. Plaintiffs may recover their costs of suit from the defendants 1 to 3. All the defendants to bear their respective costs of suit.

17-3-1945. Sd/ M.S.Bagali.

First Class Sub-Judge.

Copied by Compared by True copy.

Clerk of the Court.

53 95.

Copy of letter No.439 dated 7/14-9-45 from the Dist. Govt Pleader Dharwar to the Collector of Dharwar.

Subject:Defence of appeal No.115/45 Dharwar District Court in L.C.Suit No.405/43 of Dharwar F.C.Subjudge's Court.
Ref:R.L.A's memorandum No.352 dated 27/5/44.

I have the honour to report that Deft.No.1 Karveerayya Veeraya Kalwad has filed an appeal (No.115/45) to the Dist. Court Dharwar from the judgment and decree passed by the F.C.Subjudge Dharwar in L.C.suit No.405/ 43.

The notices of appeal which accompanies was served on 30/4/45. Since it was mislaid owning to the death of the clerk who committed suicide, I very much regret that the report regarding for sanction of defence of the above mentioned appeal could not be submitted to you earlier.

I have now therefore to request you to kindly move Government (Legal Department) to accord sanction to the defence of the above mentioned appeal on the lines mentioned in R.L.A's memorandum No.3552 of 17th May 1944 and on the favourable grounds in the judgment of the Lower Court.

--

No.L.A.W.436 Dharwar,29/9/1945.

Copy submitted to the Commissioner,S.D.Belgaum with a request to move the Government (Legal Department) to accord the necessary sanction to the defence of the appeal.

O.C.signed by Collr.

for ~~Collector~~ of Dharwar

BB.

5522

Below No.Law 436 dated 22- -45 of the Collector of Dharwar

No. 521.
Office of the District Govt.
Pleader, Dharwar, 12-11-45.

Returned with compliments.

The appeal memo is attached here-to as well as the judgment of the trial Court. It appears herein that the members of the Hindu Public at Gadag have been held to have a customary right to instal Kamanna at the City C.No.1185; and the defts. are restrained from interefering with the rights of the plffs, in this respect. Deftsi 1 and 3 i.e. lessees of the property have filed the present appeal against the decision of the lower Court. Government are added as respondent to this appeal. Practically Government have no particular interest in this litigation as our Written statement would indicate. It is submitted that since the appeal relates to rights of the Public over the property leased from Government the defence of the appeal may be sanctioned.

Sd/-
District Government Pleader.

No.L.A.W.436.
Dharwar, 21st Nov. 1945.

Copy, with the accompaniments submitted to the Commissioner S.D. Belgaum, with reference to his No.L.S.T.300 of 9-10-1945.

30/11

Collector of Dharwar.

57 32/101

No. 538

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 21st January 1946.

Subject :- Civil Appeal No. 115/45 in the Court of the District Judge, Dharwar. (C.S. No. 405 of 1943.)

MEMORANDUM.

With reference to his letter No. 521 dated the 12th November 1945, on the above subject, the District Government Pleader, Dharwar is requested to appear and defend the above appeal in the Court of the District Judge, Dharwar, on the lines indicated in this office memorandum No. 3552 dated the 17th May 1944. (copy attached)

Issued
-sd-
21/1

for Remembrancer of Legal Affairs.

Submitted for signature
KP. 21/1
A.S. 21/1
LK.

To :- The District Government Pleader, Dharwar.

Copy for information to -
The Revenue Department,
The Commissioner, S.D.,
The Collector of Dharwar.

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Submitted after issue
File in S. Dwr 3/44
ICJ: 22/1

A.S. Rw
22/1/46

S. Dwr 3/44
23/1/46

No. 765 of 1947.
Office of the Dist. Govt. Pleader
Dharwar Dt-10-6-47

To

The Remembrancer of Legal Affairs,

Bombay.

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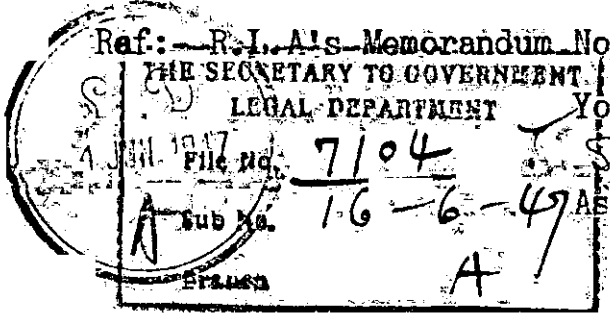
Sir,

I have the honour to forward herewith an uncertified copy of the decree in Civil Appeal No.115/45 of Dharwar, for your kind perusal.

Ref:—R.J. A's Memorandum No.538/ 21-1-46.

Your obedient servant.

Asst. Govt. Pleader, Dwr.



In the Court of the District Judge, at Dharwar.

1. Karvirayya Virayya Kalvad, Lingayat, 66, trade of Gadag.
2. Ishwarayya Karvirayya Kalvad, do, 33, teacher of Do.
3. Shekharayya Karvirayya Kalvad, do, 31, private service, do.

(Original defts 1 to 3)

Versus.

1. Subbanna Sangappa Hubballi, V-Brahmine, 51, Goldsmith of Gdg.
2. Nilkathayya Dandayya Anigalmath, Lingayat, Begging 36, do.
3. Totappa Sangappa Bulla, do, 41, Agriculture do.
4. Sannabasappa Muddapa Koti, do, 36, do. of do.

the above-named respondents 1 to 4, on their behalf and on behalf of public of old Bazar of Gadag.....(Ori.Defts 1 to

5. The Provincial Government of Bombay.....(Ori.Deft. 4).

Claim Rs. - for Court fees and jurisdiction.

The above-named appellant beg to appeal from the judgment and decree of the I class Sub-Judge, Dharwar, passed in L.C.Suit No.405 of 1943, on 17-3-1945, and set forth the following grounds of appeal, Viz. :-

1. The judgment and decree of the lower Court are contrary to law and evidence in the case.

2. Under the circumstancesof the case and on the evidence on record, the lower Court ought to have dismissed the claim plaintiffs.

3. The lower Court should have held that plaffs have not proved that the Hindu Public of the locality have a customary right to install the image of ' Kama' and to perform the ' Utsava ' of the said image.

4. The L.C. should also have held that the image of Shri Basaveshawar is not a public image and that the public have no right of worship of the said image.

5. The L.C. should have held that the rifht of the public if there were ixisted any, was extinguished by adverse possession of the defendants.

6. It should have been held that the suit is barred under the Revenue Jurisdiction Act.

It should have been held that a right to install 'Kama' and perform the Utsava is not a right that can be recognised by Court of Law.

8. The L.C. erred in attaching too much importance to the building being called the ' Kamanagudi'. That fact is perfectly consistent with private ownership and does not create any rights in favour of the public.

9. The inferences drawn by the L.C. from its observations are not correct. In this connection, it may be noted that the L.C. should not have relied upon the observations made by the City Survey Enquiry officer in 1914

10. The L.C. erred in holding that the wall, windows and the door in question are recently built.

11. The history of the property and of the erection of the building has not been properly appreciated.

12. The admitted fact that for some years past the alleged rights have never been exercised has not been given due weight to.

13. The sale by Government to the defts and the circumstances under which the sale took place have not been properly considered.

14. The decision of the Revenue Tribunal and the effects thereof have been ignored.

15. The ordinary and the usual clause in the sale deed relating to the public rights that may exist has been given undue importance to.

16. The L.C. should have held that Municipal Tax is paid regarding the property in dispute.

17. The voluminous and the reliable evidence for the defendants has been wrongly discredited while the interested evidence for the plffs has been wrongly credited.

18. The L.C. erred in ordering the eastern wall, the door and the windows fixed in it and also the partition wall to be pulled down.

19. Proper presumtions are not drawn and probabilities are not rightly weighed.

On these among other grounds. it is praved that the decree of the lower Court be reversed with costs throughout.

No. 765 of 1947.
Office of the Dist. Govt. Pleader
Dharwar Dt- 10-6-47

To

The Remembrancer of Legal Affairs,

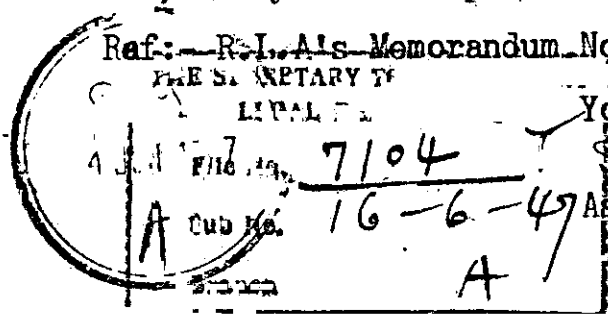
Bombay.

103
59

Sir,

I have the honour to forward herewith an uncertified copy of the decree in Civil Appeal No.115/45 of Dharwar, for your kind perusal.

Ref:- R.I.A.'s Memorandum No.538/ 21-1-46.



Your obedient servant.

S R Malapur

Asst. Govt. Pleader, Dwr.

63 2407

Dharwar,
10-4-45.

Drafted and presented by,
Sd/N.K.Dixit.
Sd/V.S.Inamdar.
Pleaders.

Necessary papers accompany. The appeal is in time. The appellant is a resident of British India. Proper Courtfee is paid. Particulars to be entered in the register of appeals

Date: 11-4-45.

Sd.S.D.Dabade.
Clerk of the Court.

Admit. Notice.
11-4-45.

Sd.B.K.Dalvi.
D.J.

Order.

The appeal is dismissed in view of the pursis (Ex.1 The Government pleader pressed for his costs. The Government is made a formal party and no claim is made against it is the plaint. I do not think that the Government is entitled to any costs. The respondent No.5 is not allowed its costs in the lower Court also. The costs of the respondent 5 are therefore not allowed in appeal.

10-4-47.

Sd. B. K. Dalavi
District Judge.

Bill of Costs.

	appellant.	Respondents 1 to 4.	Respondent. No.5.
Stamp for appeal memo.	7-11-0	0-0-0	0-0-0
Do for Vakalat.Ex.2.....	0-10-0.	0-0-0 . . .	.0-0-0
Do for process service Exs.1,6....	5- 4-0.	0-0-0	0-0-0
Pleader's fees (minimum).	15- 0-0.	15-0-0	15- 0-0
Copying fees and stamp.	26-12-0.	0-0-0	0-0-0
Paper book.	56- 4-0.	0-0-0	0-0-0
Total. .	111- 9- 0.	15-0-0 . . .	15-0-0.

Given under my hand and the seal of the Court this 10th day of April 47

Sd.S. B. Vaidya.
C l e r k .
Appellants Pl.:-

Sd. B. K. Dalvi.
Dist. Judge.

Respondents Pl:-